BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

BONNIE CREED Claimant)
VS.)) Docket No. 228,677
EUREST (COMPASS GROUP USA) Respondent)
AND)
CONTINENTAL NATIONAL AMERICAN GROUP Insurance Carrier))

ORDER

Claimant appeals the August 31, 1999, Order of Administrative Law Judge Jon L. Frobish wherein the Administrative Law Judge ruled respondent was entitled to credit for all monies previously paid and the attorney fee issue was preserved for appeal.

APPEARANCES

Claimant appeared by her attorney, Steven R. Wilson of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, D. Steven Marsh of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations set forth in the February 19, 1999, Award of the Administrative Law Judge are considered for the purpose of this appeal. In addition, the Appeals Board considers the transcript of motion hearing held August 31, 1999, before the Administrative Law Judge with attachments, and the stipulations entered into by the parties during oral argument to the Board.

ISSUES

- (1) Did the Administrative Law Judge err in giving respondent credit for all monies previously paid?
- (2) Is claimant entitled to attorney fees?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary file herein, the Appeals Board makes the following findings of fact and conclusions of law:

In the original February 19, 1999, Award, claimant was granted 3.2 weeks temporary total disability compensation at the rate of \$156.11 per week totaling \$499.55, followed by 33.46 weeks permanent partial disability compensation at the rate of \$156.11 per week totaling \$5,223.44 for a 17 percent permanent partial disability to the right lower extremity. The total award was \$5,722.99.

The evidence presented to the Administrative Law Judge included information regarding the amount of temporary total disability compensation and the amount of temporary partial disability compensation paid to claimant during the litigation of this matter. The amounts of temporary total and temporary partial disability were not at issue before the Board on appeal from the original award.

The matter was appealed to the Workers Compensation Board and, in its Order of May 25, 1999, the Board amended the Award to grant claimant 3.2 weeks temporary total disability compensation at the rate of \$156.11 per week totaling \$499.55, followed by 13.78 weeks permanent partial disability compensation at the rate of \$156.11 per week totaling \$2,151.20 for a 7 percent permanent partial scheduled injury to the right lower extremity, making the total award \$2,650.75. At oral argument before the Appeals Board, the parties reached an agreement regarding the credit issue wherein the Appeals Board will modify the May 25, 1999, Order to grant claimant a total of 3.48 weeks temporary total disability compensation, resulting in an additional payment by respondent to claimant of \$40.58.

With regard to claimant's request for post award attorney fees, the parties further stipulated that the Administrative Law Judge in his August 31, 1999, Order, and at the request of claimant's counsel, preserved the attorney fee issue for appeal. K.S.A. 1998 Supp. 44-555c obligates the Board to review questions of law and fact as presented and introduced before the Administrative Law Judge. The issue regarding claimant's request for attorney fees has not been presented to the Administrative Law Judge and no decision has been rendered by the Administrative Law Judge. Therefore, under K.S.A. 1998 Supp. 44-555c, there is no question of law or fact regarding those fees for the Appeals Board review. The parties agreed that this matter must be remanded to the Administrative Law Judge for consideration of claimant's request for post award attorney fees.

AWARD

IT IS SO ORDERED

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated August 31, 1999, should be, and is hereby, modified per the agreement of the parties. The respondent shall pay to claimant an additional \$40.58 in temporary total disability compensation benefits. The issue regarding claimant's entitlement to post award attorney fees is remanded back to the Administrative Law Judge for consideration.

IT IO OO ONDERED.
Dated this day of December 1999.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
D. Steven Marsh, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director